



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

MICHAEL CHRISTOPHER MAIER

Respondent Name

TEXAS MUTUAL INSURANCE COMPANY

MFDR Tracking Number

M4-10-3633-01

Carrier's Austin Representative

Box Number 54

MFDR Date Received

April 15, 2010

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Please consider additional payment for the injection code of 27322. Your suggested and paid amount of \$233.83 is below the fee schedule."

Amount in Dispute: \$123.51

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "In recent communication with the respondent the requestor indicated that the underlying issue has been resolved."

Response Submitted by: Texas Mutual Insurance Company, 6210 E. Highway 290, Austin, Texas 78723

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 4, 2009 to December 22, 2009	Procedure Code J7322	\$123.51	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203 sets out the fee guidelines for professional medical services.
3. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
4. 28 Texas Administrative Code §133.4 requires written notification to health care providers regarding contractual agreements for informal and voluntary networks.
5. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 45 – CHARGE EXCEEDS FEE SCHEDULE/MAXIMUM ALLOWABLE OR CONTRACTED/LEGISLATED FEE ARRANGEMENT. (USE GROUP CODES PR OR CO DEPENDING UPON LIABILITY).
 - B5 – COVERAGE/PROGRAM GUIDELINES WERE NOT MET OR WERE EXCEEDED.
 - 724 – NO ADDITIONAL PAYMENT AFTER A RECONSIDERATION. NETWORK CONTRACT APPLIED BY TEXAS STAR NETWORK. PRIMARY NETWORK CONTRACT APPLIED BY FOCUS/FIRST HEALTH.
 - 729 – CONTRACT APPLIED BY TEXAS STAR NETWORK. FOR MORE INFORMATION PLEASE CALL 800-381-8067
 - 793 – REDUCTION DUE TO PPO CONTRACT. PPO CONTRACT WAS APPLIED BY FOCUS/FIRST HEALTH. FOR PROVIDER SUPPORT 1-800-243-2336.

Issues

1. Is the underlying issue between the respondent and requestor resolved?
2. Are the disputed services subject to a contractual agreement between the parties to this dispute?
3. What is the recommended payment amount for the services in dispute?
4. Is the requestor entitled to reimbursement?

Findings

1. The respondent's position statement asserts that "In recent communication with the respondent the requestor indicated that the underlying issue has been resolved." No documentation was submitted to support that the dispute has been resolved. Nevertheless, the Division contacted the requestor to determine whether the requestor wished to withdraw the dispute. By e-mail dated September 7, 2010, the requestor responded "No we don't wish to withdraw the dispute we didn't get paid correctly for this code on all three days of services." Accordingly the Division finds that a dispute still exists with regard to the disputed services.
2. The insurance carrier reduced payment for disputed services with reason codes 45 – "CHARGE EXCEEDS FEE SCHEDULE/MAXIMUM ALLOWABLE OR CONTRACTED/LEGISLATED FEE ARRANGEMENT. (USE GROUP CODES PR OR CO DEPENDING UPON LIABILITY)."; 724 – "NO ADDITIONAL PAYMENT AFTER A RECONSIDERATION. NETWORK CONTRACT APPLIED BY TEXAS STAR NETWORK. PRIMARY NETWORK CONTRACT APPLIED BY FOCUS/FIRST HEALTH."; 729 – "CONTRACT APPLIED BY TEXAS STAR NETWORK. FOR MORE INFORMATION PLEASE CALL 800-381-8067" and 793 – "REDUCTION DUE TO PPO CONTRACT. PPO CONTRACT WAS APPLIED BY FOCUS/FIRST HEALTH. FOR PROVIDER SUPPORT 1-800-243-2336." Review of the submitted information found insufficient documentation to support that the disputed services are subject to a contracted fee arrangement between the parties to this dispute. Nevertheless, on December 13, 2010, the Division requested the respondent to provide documentation to support the contractual payment adjustments in accordance with Labor Code Sec. 413.011(d-3) and (d-1)(2), as well as 28 Texas Administrative Code §133.4.

Labor Code Sec. 413.011(d-1) requires that:

If a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

- (1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers on the carrier's behalf; and
- (2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements established under Subsection (d-2).

Labor Code Sec. 413.011(d-2) requires that

"An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall notify each health care provider of any person that is given access to the network's fee arrangements with that health care provider within the time and according to the manner provided by commissioner rule."

Labor Code Sec. 413.011(d-3) states, in pertinent part, that:

An insurance carrier shall provide copies of each contract described by Subsection (d-1) to the division on the request of the division. . . . Notwithstanding Subsection (d-1) or Section 1305.153, Insurance Code, the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if the contract: . . .

(3) does not:

- (A) clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the named insurance carrier's authorized agent; or
- (B) comply with the notice requirements under Subsection (d-2).

28 Texas Administrative Code §133.4(c) further requires that:

Required Notice. Each informal network or voluntary network, or the insurance carrier, or the insurance carrier's authorized agent, as appropriate, shall notify each affected health care provider of any person that is given access to the informal or voluntary network's fee arrangement with that health care provider within the time and manner provided by this section.

28 Texas Administrative Code §133.4(g) states that:

The insurance carrier is not entitled to pay a health care provider at a contracted fee negotiated by an informal network or voluntary network if:

- (1) the notice to the health care provider does not meet the requirements of Labor Code §413.011 and this section; or
- (2) there are no required contracts in accordance with Labor Code §413.011(d-1) and §413.0115.

Review of the submitted information finds no documentation to support a contractual arrangement between the carrier or authorized agent and the alleged informal or voluntary network that authorizes the network to contract with health care providers on the carrier's (Texas Mutual's) behalf in accordance with Subsection (d-1)(1). No documentation was found to support notice to the health care provider that Texas Mutual had been given access to the network's fee arrangements with the health care provider in accordance with Labor Code 413.011(d), Subsections (d-2), (d-1)(2), and (d-3)(3)(B), or 28 Texas Administrative Code §133.4. Review of the submitted information finds no documentation that clearly states that the contractual fee arrangement is between the health care provider and the named insurance carrier (Texas Mutual) or the named insurance carrier's authorized agent in accordance with Subsection (d-3)(3)(A). The Division therefore finds that the insurance carrier's payment reduction reason is not supported. Consequently, the Division concludes that the insurance carrier is not entitled to pay the health care provider at a contracted fee negotiated by an informal network or voluntary network, and may not pay fees that are inconsistent with the Division's fee guidelines. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.

3. This dispute relates to professional medical services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.203(d), which states that:

The MAR for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L shall be determined as follows:

- (1) 125 percent of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule;
- (2) if the code has no published Medicare rate, 125 percent of the published Texas Medicaid fee schedule, durable medical equipment (DME)/medical supplies, for HCPCS; or
- (3) if neither paragraph (1) nor (2) of this subsection apply, then as calculated according to subsection (f) of this section.

Review of the submitted procedure codes finds that the disputed services are services for which no relative value unit or payment has been assigned by Medicare or Texas Medicaid as set forth in §134.203(d); therefore, neither paragraph (1) nor (2) of §134.203(d) are applicable to the services in dispute. Consequently, reimbursement is calculated according to §134.203(f), which requires that "For products and services for which no relative value unit or payment has been assigned by Medicare, Texas Medicaid as set forth in §134.203(d) or §134.204(f) of this title, or the Division, reimbursement shall be provided in accordance with §134.1 of this title (relating to Medical Reimbursement)."

Per Texas Administrative Code §134.203 "(f) For products and services for which no relative value unit or payment has been assigned by Medicare, Texas Medicaid as set forth in §134.203(d) or §134.204(f) of this title, or the Division, reimbursement shall be provided in accordance with §134.1 of this title (relating to Medical Reimbursement)."

28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626, requires that, in the absence of an applicable fee guideline or a negotiated contract, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection 134.1(f), which states that "Fair and reasonable reimbursement shall: (1) be consistent with the criteria of Labor Code §413.011; (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available."

4. Former 28 Texas Administrative Code §133.307(c)(2)(G), effective May 25, 2008, 33 *Texas Register* 3954, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that: Procedure code J7322, service dates December 4, 2009, December 15, 2009, and December 22, 2009, represents services for which CMS does not determine a price or relative value. Neither is the service assigned a price or relative value by Texas Medicaid. If reimbursement is justified, these services are paid at a fair and reasonable rate. The insurance carrier allowed \$233.83 per service date, for a total of \$700.14. Review of the submitted information finds no documentation to support a different reimbursement amount from the amount determined by the carrier, therefore no additional payment is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has failed to establish that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signature

_____	Grayson Richardson	October 17, 2014
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.